IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.27 of 1996 and
RSA No.179 of 1996

Reserved on: September 12, 2007

Decided on*: *November 05, 2007.

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1. RSA No.27 of 1996
Smt.Sheetla Devi & Ors. ***…..Appellants.***

VERSUS

Smt.Hara Dassi & Ors. ***…..Respondents.***

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2. RSA No.179 of 1996
Mahadev Prashad & Ors. **….Appellants.**

Versus

Hara Dassi & Ors. **…Respondents.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellants:	**Mr.Ajay Mohan Goel, Advocate, for Appellants in both the above appeals and also for proforma respondents No.3(a) to 3(c) in RSA No.179 of 1996.**
For the Respondents:	**Mr.Ashwani Kumar Sharma, Advocate for respondents No.1 & 2 in both the appeals.**

Kuldip Singh, Judge

This judgment shall decide RSA No.27 of 1996 and RSA No.179 of 1996 both having arisen out of common judgment, decree dated 13.6.1995 passed by learned Additional District Judge, Kullu affirming the judgment, decree dated 29.4.1994 passed by learned

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

Sub Judge 1st Class, Kullu in Civil Suit No.145/91. Paras Nath and Smt. Chander Kaura died during the pendency of the above appeals and therefore their legal representatives were brought on record. The facts and parties are referred from RSA No.27 of 1996.

2. The facts, in brief, as emerge from the plaint, are that Smt.Hara Dassi respondent No.1 and Smt.Uttam Dassi respondent No.2, widows of Khewa Ram filed a suit for declaration and consequential relief of injunction against Smt.Chander Kaura widow, Mahavir Prashad son of Gautam Nath and Paras Nath appellant-defendant No.3 regarding land comprised in Khasra No.3281/1578 measuring 1-18 Bighas situated at Phati Bhallan-I, Kothi Bhallan, Tehsil and District Klullu as per Jamabandi 1987-88. As per plaintiffs, the suit land is recorded in the name of Gautam Nath, predecessor of Smt. Chander Kaura and Mahavir Parshad and in possession of appellant Paras Nath to the extent of half share and Khewa Ram (deceased) husband of respondents No.1 & 2 to the extent of half share. The suit land was earlier in possession of Khewa Ram as tenant at Will on payment of rent under the previous owners. On the death of Khewa Ram, husband of respondents No.1,2 , the suit land was inherited by the respondents No.1,2 including tenancy rights of Khewa Ram in the suit land and they became tenants in possession of the suit land. On coming into force of H.P.Tenancy and Land Reforms Act, 1972 (for short 'the Act'), the respondents No.1,2 became owners of the suit land on the appointed day. The entries showing

Smt. Chander Kaura and Mahavir Prashad as owners of the suit land and appellant in possession of the suit land to the extent of half share as tenant are wrong and not binding on the respondents No.1,2 /plaintiffs.

3. The appellant Paras Nath was influential person. He retired as Tehsildar and in connivance with the revenue officials he got his name recorded in possession of half share of the suit land as tenant at Will under Gautam Nath and got the name of Khewa Ram (deceased) deleted from the column of possession. In fact, Khewa Ram was tenant of the suit land and appellant Paras Nath was never tenant on the suit land or any portion thereof. The defendants on the basis of wrong revenue entries have started interference on the suit land since 20.9.1991. On these grounds, the suit for declaration was filed that respondents No.1,2/plaintiffs were earlier in possession of the suit land as tenants and now they are owners thereof by operation of the Act and they also prayed consequential relief of injunction.

4. The suit was contested by Smt. Chander Kaura and Mahavir Prashad by filing common written statement in which preliminary objections of limitation, maintainability, estoppel, suppression of material facts, jurisdiction have been taken. On merits, the correctness of revenue entries showing respondents No.1,2/plaintiffs and appellant Paras Nath in possession of the suit land were denied. They have pleaded that they are owners in possession of the suit land. The tenancy of Khewa Ram and plaintiffs

on the suit land was denied. Smt. Chander Kaura and Mahavir Prashad denied the claim of the respondents No.1 and2.

5. The appellant Paras Nath filed separate written statement in which he took preliminary objections of locus standi, maintainability, limitation and jurisdiction of the Court to try the suit. On merits, he claimed his possession on the suit land to the extent of half share and denied Khewa Ram was ever in possession of the suit land as tenant. The entries showing Khewa Ram as tenant are wrong. The respondents No.1,2/plaintiffs or their predecessor were never tenants nor in possession of the suit land. The appellant Paras Nath thus denied the claim of the respondents No.1,2/plaintiffs.

6. The learned Sub Judge found respondents No.1,2/plaintiffs in possession as owners of the suit land. It has been held that civil Court has jurisdiction to try the suit and ultimately the suit was decreed on 29.4.1994. Paras Nath filed Civil Appeal No.29/94. Smt.Chander Kaura and Mahavir Parsad filed Civil Appeal No.33/94 against the judgment and decree dated 29.4.1994, both the appeals were dismissed by common judgment by learned Additional District Judge, Kullu on 13.6.1995. Paras Nath filed RSA No.27 of 1996, Smt. Chander Kaura and Mahavir Parshad filed RSA No.179 of 1996 against common judgment and decree dated 13.6.1995. Both appeals have been heard on the following substantial question of law:-

> *Whether the Courts below erred in holding that Civil Court has jurisdiction and that*

judgment of this Hon'ble Court in ***Chuhniya Devi*** *Vs.* ***Jindu Ram and others****, 1991 (1) Shim.L.C.223, is not applicable in the present case*.

7. I have heard Shri Ajay Mohan Goel, Advocate for the appellants and Mr.Ashwani Kumar Sharma, Advocate for respondents No.1,2/plaintiffs and gone through the record. The learned counsel for the appellants has submitted that in view of ***Chuhniya Devi*** *Vs.* ***Jindu Ram and others****, 1991 (1) Shim.L.C.223,* the civil Court has no jurisdiction to try the case and, therefore, judgment and decree passed by the trial Court and upheld by lower appellate Court are not sustainable. The learned counsel for the respondents No.1, 2 has submitted that Civil Court has jurisdiction to try the suit. The decision of this Court in *Chuhniya Devi's case is* not applicable in the facts and circumstances of the present case.

8. The controversy in the present case in view of substantial question of law framed above is very short regarding the jurisdiction of the civil Court to try the suit. In *Chuhniya Devi's case (supra) t*he question before the Full Bench was whether the civil Court has jurisdiction in respect of an order of conferment of proprietary rights under Section 104 of the H.P.Tenancy and Land Reforms Act which has not been assailed under that Act. In Para-64 of the judgment, the Full Bench has held the civil Court has no jurisdiction to go into any question connected with the conferment of proprietary rights under

Section 104 of the Act, except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with.

9. In the present case, the suit has not been filed questioning the conferment of proprietary rights. The suit has been filed by the respondents No.1,2/plaintiffs simply on the ground that earlier their predecessor Khewa Ram was the tenant in possession of the suit land and after his death they are tenants in possession of the suit land and they have become owners of the suit land after coming into force of the Act. The case of ownership of the suit land has been pleaded by the respondents No.1,2/plaintiffs on the ground that conferment of proprietary rights under the Act is automatic. In ***Daulat Ram etc.*** *Versus* ***The State of H.P. etc., 1978 ILR (Himachal Series) 742*** and in ***Mohan Singh*** *Versus* ***Manju Devi and others, 1997(1) SLJ 304,*** it has been held that conferment of proprietary rights is automatic.

10. In ***Pritam Chand and others*** *Versus* ***Krishan Kumar and others, 1997 (1) Sim.L.C. 255,*** the plaintiffs filed a suit for declaration and injunction that they are tenants on the suit land and entries showing defendants in owners in possession are wrong, a prayer for injunction was also made. The learned Single Judge of this

Court in Para-7, after noticing *Chuhniya Devi's case (supra),* held as follows:-

> "The learned first appellate Court proceeded on the assumption that the plaintiffs in the present case were entitled for the declaration of proprietary rights in their favour and consequently, the suit involved a question connected with it. It may be noticed that the defendants who claim themselves to be the owners in possession of the suit land, at no point of time accepted the plaintiffs to be the tenants of the suit land. In this situation, the ratio of the Full Bench decision could not be made applicable to the present case. Here in the present case, the status of the plaintiffs – tenants has been specifically denied by the landlords except on a small piece of land. The legislature has barred only such types of cases from the purview of the Civil Court where there was no dispute between the parties and the tenant cultivating the land was accepted to be in possession of it as a tenant. In the present case, the facts are totally different. It would thus be seen that the learned first appellate Court fell into an error in holding that the Civil Court's jurisdiction to try the present suit was barred."

11. In the present case, the respondents No.1,2/plaintiffs nowhere questioned the order conferring proprietary rights under

Section 104 of the Act. The respondents have simply projected their title and their right to remain in possession on the suit land. The question in the present case is who is in possession of suit land and in what capacity. The two Courts below have held that earlier Khewa Ram was tenant in possession of the suit land and now respondents No.1,2 are owners in possession of the suit land. The two Courts below have rightly held that the Civil Court has the jurisdiction to try the suit. The appellants have failed to make out any case for interference. The substantial question of law is answered in both the appeals against the appellants/defendants and in favour of the respondents/plaintiffs.

12. No other point was urged.

13. The result of the above discussion, both appeals being RSA No.27 of 1996 and RSA No.179 of 1996 are dismissed with costs.

November 05, 2007. **(*Kuldip Singh*)**
(soni) ***Judge***